

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BRIAN KEITH SCHWAB,

Plaintiff,

v.

COUNTY OF KENT, et al.,

Defendants.

Case No. 1:20-cv-290

HON. JANET T. NEFF

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**OPINION AND ORDER**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendants Kent County, Kent County Sheriff and Rob Steele filed a motion for summary judgment on Plaintiff's sole remaining claim, a First Amendment access-to-the-courts claim Plaintiff made in connection with his three criminal cases. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending this Court grant Defendants' motion and dismiss Plaintiff's complaint with prejudice because Plaintiff failed to demonstrate any constitutional violation. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

The Magistrate Judge concluded that Plaintiff failed to show actual prejudice to his litigation in two of his three criminal cases as the trial court considered the grounds he raised in

his post-Judgment motions and denied them on their merits (R&R, ECF No. 56 at PageID.514). The Magistrate Judge determined that the motion in Plaintiff's third criminal case could not support an access-to-the-courts claim (*id.* at PageID.514-515).

In his objections to the Report and Recommendation, Plaintiff first reiterates his arguments that the post-Judgment motions were denied for "technicalities" and that he was "in fact, denied meaningful access to the courts" (Pl. Obj., ECF No. 57 at PageID.517-521, 524-525). However, as the Magistrate Judge emphasized, "Plaintiff's unsupported allegations of prejudice and actual harm do not suffice to defeat summary judgment" (R&R, ECF No. 56 at PageID.514-514). Plaintiff's remaining objections concern his arguments about the County's policy, the Sheriff's lack of personal involvement, and qualified immunity (Pl. Obj., ECF No. 57 at PageID.522-523), topics that the Magistrate Judge expressly declined to address (R&R, ECF No. 56 at PageID.515).

In sum, Plaintiff's arguments fail to demonstrate any factual or legal error in the Magistrate Judge's analysis or conclusion. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Further, a Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

**IT IS HEREBY ORDERED** that the Objections (ECF No. 57) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 56) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Motion for Summary Judgment (ECF No. 39) is GRANTED.

**IT IS FURTHER ORDERED** that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: August 31, 2021

/s/ Janet T. Neff  
JANET T. NEFF  
United States District Judge